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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/303,306

04/30/99

HAMBLEY

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AWI9010

IM62/0925

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AIR MAIL

EXAMINER

CINTINS, I

ART UNIT

PAPER NUMBER

1724

5

DATE MAILED:

09/25/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/303,306

Applicant(s)

Hambley et al.

Examiner

Ivars C. Cintins

Group Art Unit

1724



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-39 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-39 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, 18-26 and 28-34, drawn to a filter underdrain assembly, classified in class 210, subclass 291.
- II. Claims 8-12 and 27, drawn to a panel member, classified in class 210, subclass 541.
- III. Claim 13, drawn to an apparatus for determining backwash water flow distribution through an underdrain assembly, classified in class 210, subclass 86.
- IV. Claims 14-17, drawn to a method for measuring backwash water flow through a filter underdrain assembly, classified in class 210, subclass 739.
- V. Claims 35-39, drawn to a method for equalizing backwash water flow in a filter underdrain assembly, classified in class 210, subclass 793.

The inventions are distinct, each from the other because:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the

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instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the filter underdrain assembly of group I does not require the specific panel member of group II (i.e. having an attachment and a sealing member), as evidenced by claim 1. Furthermore, this filter underdrain assembly does not even require any panel members, as evidenced by claim 28. The subcombination has separate utility such as a cover plate for a ventilation duct.

Inventions III and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process of group IV can be carried out with another apparatus (i.e. one without an indicator to measure rise and fall of water), different from that of group III. Alternatively, the apparatus of group III can be used in another process (i.e. one which does not measure flow rate of water), different from that of group IV.

The methods of groups IV and V are independent and distinct from one another because the method of group IV does not require

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the hole blocking step of group V, and the method of group V does not require the flow rate measuring step of group IV.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, and because the searches for the individual Groups are not coextensive, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Furthermore, if the invention of Group I is elected, then an election of species is also required. This application contains claims directed to the following patentably distinct underdrain assembly species of the claimed invention:

- (1) a plurality of panel members; and
- (2) a perforated arch.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the underdrain assembly species that

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is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, Applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can

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normally be reached on Monday through Thursday from 8:30 AM to 7:00 PM.

The fax phone numbers for this art unit are: (703) 305-3599 for "Official" faxes after Final Rejection; (703) 305-7718 for all other "Official" faxes; and (703) 305-3602 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.


Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
September 23, 2000